

**OPINION
66-18**

November 4, 1966 (OPINION)

Mr. Gerald G. Glaser

Assistant State's Attorney

Burleigh County

RE: Bonds - Counties - Definition of "County Buildings"

This is in reply to your letter of November 2, 1966, relative to a county bond issue. You note the City of Bismarck has requested the Board of County Commissioners to call a special election pursuant to the provisions of section 21-03-10 of the North Dakota Century Code, at which election would be presented the question of whether Burleigh County should issue bonds in an amount not to exceed \$900,000.00 for the purpose of jointly constructing with the City of Bismarck a civic center to be located within the City. It is proposed that the bonds would be issued pursuant to the provisions of section 21-03-06 of the North Dakota Century Code, as amended.

You further note the participation of the county would consist of applying the proceeds of the bond issue as its share of the capital contribution necessary for the construction of the building. The structure would be used primarily for diverse public events such as stock shows, conventions, basketball tournaments, etc. Agreements would be executed pursuant to the provisions of Chapter 54-40 of the North Dakota Century Code, which would provide, in substance, that the City would assume responsibility for the maintenance and use of the building.

You ask whether the county has the necessary authority to issue bonds in the manner and for the purposes set forth above.

Section 21-03-06(1) of the North Dakota Century Code, as amended, authorizes a county to issue bonds to provide county buildings, among other purposes.

Section 54-40-01 of the North Dakota Century Code provides:

AGREEMENT. Two or more governmental units or municipal corporations having in common any portion of their territory or boundary, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise their respective separate powers, or any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised for the purpose of acquiring, constructing and maintaining any building for their joint use. The term 'governmental unit' as used in this action includes and means every city, village, county, town, park district, school district, states and United States governments and departments of each thereof, and all other political subdivisions even though not specifically named or referred to

herein."

Section 54-40-08 of the North Dakota Century Code, as amended, provides:

JOINT FUNCTIONS - WHO MAY PARTICIPATE. Any municipality or political subdivision of this state upon approval of their respective governing bodies may enter into agreements with one another for joint or cooperative action, on a cost-sharing basis, or otherwise, to carry out any function or duty which may be authorized by law or assigned to one or more of them, and to expend funds of such municipality or political subdivision pursuant to such agreement, and otherwise share or contribute property in accordance with such agreement in jointly or cooperatively carrying out such function or duty."

There is no doubt but that under the above-quoted statutory provisions, the City of Bismarck and the County of Burleigh may enter into cooperative agreements for the construction of a building, among other things. The only question to be determined is whether, under the provisions of Chapter 21-03 of the North Dakota Century Code, a county is authorized to issue bonds for a "civic center," auditorium, or building of that nature. Chapter 21-03 does not define what are "county buildings." Section 11-11-16 of the North Dakota Century Code refers to the power of the board of county commissioners to provide for the erection of a "courthouse, hospitals, jails, and other necessary buildings within and for the county," but such section is applicable in those instances in which such buildings are to be erected out of current revenues and would not appear to be a limitation upon the issuance of bonds by the county for any other "county building" since such bonds are issued only after the electorate has approved their issuance.

The information available to us indicates that the taxable valuation of Burleigh County is \$67,689,852.00.

Section 21-03-06(1) permits the county to issue bonds for county buildings "but all outstanding unpaid bonds, for this purpose shall not exceed in amount at any one time one and one-half percent of the value of the taxable property in such county * * * ." The information available to us indicates that the value of the taxable property in Burleigh County at the present time is \$67,689,852.00. It is our further understanding that there are no unpaid bonds outstanding at the present time. One and one-half percent of \$67,689,852.00 is \$1,015,347.78. This amount is in excess of the \$900,000.00 referred to in your letter and therefore the indebtedness limits would not prevent the issuance of the bonds in question.

It is our opinion that the County Commissioners must exercise their sound discretion in determining what is a "county building" within the meaning of Chapter 21-03. It is our further opinion a determination that an auditorium, civic center, or building of that nature is a county building would not violate the exercise of such discretion. Should the County Commissioners determine that such building is a county building, it is also our opinion that they may submit to the electors of the county the question of issuing bonds for the construction of such building jointly with the City of

Bismarck.

HELGI JOHANNESON

Attorney General